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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/758,440

01/15/2004

John E. Butcher

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03/26/2007

FAY SHARPE LLP

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CLEVELAND, OH 44114

EXAMINER

QUINN, COLLEEN M

ART UNIT

PAPER NUMBER

3634

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

03/26/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/758,440

Applicant(s)

BUTCHER ET AL.

Examiner

Colleen M. Quinn

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

The disclosure is objected to because of the following informalities:

The language describing the numbered elements in the figures is not consistent.

It is suggested that the applicant avoid using different language when referring to the same element of the invention. For example, the applicant should avoid referring to element "20" as "holders or decks" on line 3 of [0015] of page 4 and as "decks" and samples in the paragraphs following [0015]. A review of the specification and appropriate corrections by the applicant would clarify any other misunderstandings that may be formed by any variation in wording.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear how at least one of the "holders comprises a deck" when the applicant's specification disclose a "holder" and deck" to be the same item (see Specification Objection above).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 4-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Day et al. (US 4,104,809). Day et al. discloses a system for organizing and displaying wall covering samples; said system comprising a plurality of wall covering samples (50), each sample having a color characteristics; a plurality of sample holders (12,46a), each holder being dedicated to a different color group and configured to hold a set of the samples; wherein the samples are organized into the holders based upon their respective color characteristics such that each holder holds a set of samples having like color characteristics (column 1, lines 34-35), wherein at least one of the holders comprises a deck (figures 1 & 3) that holds the set of samples stacked atop one another, wherein the samples held by the deck have holes (48) therein and the deck comprises a pin (16) that passes through the holes in the samples held by the deck to thereby secure the set of samples in the deck such that individual samples are selectively rotatable about the pin in a plane substantially normal to the pin (figure 1), wherein said holders have faces (46a) that include indicia/coding representative of the color groups thereon to indicate the color group to which the respective holders are dedicated (column 3, lines 50-60) wherein the color characteristics of the samples

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comprise the samples' predominate hue (color family), or intensity (shades) (column 3, lines 43-44).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Day et al. as applied to claims 1 and 4-8 above and further in view of McPherson et al. (US 5,109,991). Day et al. fail to disclose a case having a plurality of compartments in which the holders are selectively stored.

McPherson et al. discloses a wall covering sample storage case (10) having a plurality of compartments (22) in which holders (36) are selectively stored in each compartment, providing a storage container which permits ready removal and replacement of the holders (column 1, lines 19-23).

Therefore, it would have been obvious to one of ordinary skill in the art to provide the system of Day et al. with a case, having a plurality of compartments, as taught by McPherson et al. in order to provide a storage container which permits ready removal and replacement of the holders.

Claims 9 and 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Day et al. alone, as applied to claims 1 and 4-8 above. Though claims 9 and 11-14 are directed towards a method for organizing and displaying wall-covering samples, and Day et al. disclose an apparatus that organizes and displays wall-covering samples, the method is inherent since Day et al. teach sorting the samples into sets having like color characteristics (column 3, lines 43-44); holding the sets of samples together in color groups, each color group being distinguished by that color characteristic which caused the samples to be sorted into the set that comprises samples that are stacked atop one another such that individual samples are selectively rotatable with respect to one another about a common axis, said common axis being substantially normal to the samples' faces as they are stacked atop one another and wherein the color characteristic is a predominate hue of the samples or an intensity of color of the samples (column 3, lines 43-44), as advanced in the above rejections.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Day et al. in view of McPherson et al., as applied to claims 2 and 3 above. Though claim 10 is directed towards a method for organizing and displaying wall-covering samples, and McPherson et al. disclose an apparatus that organizes and displays wall-covering samples, the method is inherent since McPherson et al. teach a display rack having a plurality of compartments in which holders are selectively stored in each compartment, providing a storage container which permits ready removal and replacement of the holders (column 1, lines 19-23) without having to move the other holders.

Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Day et al. claims 9 and 11-14 above and further in view of Kramer et al. (US 2,786,281). Day et al. fail to disclose a non-color design element that varies from sample to sample.

Kramer et al. teach organizing and displaying samples (B, C) that have a non color design element, the weave/construction of the sample, that varies from sample to sample (column 2, lines 52-54), providing an organized means for displaying textile swatches.

Therefore, it would have been obvious to one of ordinary skill in the art to provide the display of Day et al. with samples that vary in construction, as well as color, in order to provide a means for organizing and displaying a variety of materials that is both portable and secure.

Response to Arguments

Applicant's arguments with respect to claims 1-16 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Colleen M. Quinn whose telephone number is (571) 272-6289. The examiner can normally be reached on 8:30AM-5:00PM Monday - Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on (571) 272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CMQ
3/20/07



SARAH PUROL
PRIMARY EXAMINER